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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 JOHN LYNINGER,

)

9 Plaintiff,

)

10 vs.

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11 JIM MOTSINGER et al.,

)

ORDER

12 Defendants.

)

13 _____)

3:10-cv-00504-RCJ-RAM

14 This case arises out of alleged age discrimination in employment. The Court has
15 dismissed the case, and Plaintiff has filed a Motion to Reconsider (ECF No. 129). For the
16 reasons given herein, the Court denies the motion.

17 **I. FACTS AND PROCEDURAL HISTORY**

18 Plaintiff worked for Defendant Interstate Oil Co. (“Interstate”) from October 25, 2005
19 until Interstate terminated him on February 19, 2010. He alleges discriminatory treatment by his
20 employer and co-workers, including wrongful termination. Plaintiff sued ten Defendants (and
21 potentially thousands of unnamed defendants) in this Court. The Complaint can be read to plead
22 a single cause of action for illegal age discrimination pursuant to the Age Discrimination in
23 Employment Act of 1967 (“ADEA”), 29 U.S.C. § 621 *et seq.* The Second Amended Complaint
24 (“SAC”) includes minor changes to the allegations.

25 Plaintiff filed eleven identical motions for preliminary injunction, wherein he demanded

1 reinstatement and back pay, as well as \$1,000,000,000 as damages for an alleged death threat by
2 a supervisor, or, in the alternative, \$5,000,000 plus \$4500 per month for 58 years. The Court
3 denied those motions and ordered Plaintiff to enter into the record a copy of his charge of
4 discrimination to the EEOC within fourteen days, so the Court could be satisfied of its ability to
5 rule on Plaintiff's ADEA claim. Twenty-nine days later, Plaintiff filed his purported letter to the
6 EEOC, dated February 26, 2010. Interstate suspected that Plaintiff had fabricated the letter in
7 order to manufacture jurisdiction. Because Interstate had never received any notice from the
8 EEOC about any charge of discrimination until after the present case was filed in August 2010, it
9 became suspicious upon seeing the February 26, 2010 letter in the record and made a Freedom of
10 Information Act ("FOIA") request to the EEOC. The EEOC's reply indicated it had never
11 received any letter from Plaintiff dated from February 2010, but first received communications
12 from Plaintiff after he filed the present lawsuit in August 2010.

13 Defendants filed motions to dismiss for insufficient service of process and for failure to
14 comply with a court order or to exhaust administrative remedies. Plaintiff filed seventeen
15 motions for sanctions, for various injunctive relief, for leave to amend, and for appointment of
16 counsel. The Court denied Plaintiff's motions and dismissed the case under Rule 41(b) after
17 Plaintiff failed to appear for the hearing. Plaintiff has moved for the Court to reconsider.

18 **II. LEGAL STANDARDS**

19 A motion to alter or amend a judgment must be made within twenty-eight days of
20 entry of judgment. Fed. R. Civ. P. 59(e). Here, the relevant order was entered on February 25,
21 2011, and the present motion was filed thirty-one days later on March 28, 2011. Therefore the
22 motion to reconsider is untimely under Rule 59(e) and will be considered under Rule 60(b). *See*
23 *Am. Ironworks & Erectors, Inc. v. N. Am. Contr. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001)
24 ("[A] 'motion for reconsideration' is treated as a motion to alter or amend judgment under
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1 Federal Rule of Civil Procedure Rule 59(e) if it is filed within ten days of entry of judgment.”).¹

2 **III. ANALYSIS**

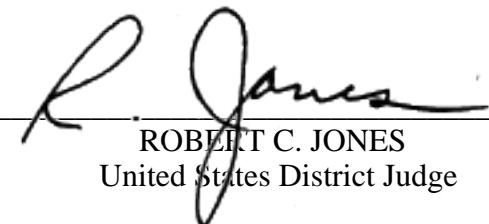
3 Plaintiff has not adduced any law or facts warranting reconsideration, and he again failed
4 to appear for his hearing.

5 **CONCLUSION**

6 IT IS HEREBY ORDERED that the Motion to Reconsider (ECF No. 129) is DENIED.

7 IT IS SO ORDERED.

8 Dated this 21st day of July, 2011.

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10 
11 ROBERT C. JONES
United States District Judge

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25 ¹On December 1, 2009, the time to file a Rule 59(e) motion was extended to twenty-eight
days. *Compare Fed. R. Civ. P. 59(e) (2009), with Fed. R. Civ. P. 59(e) (2010).*